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H. R. 2909

To amend the Federal Power Act to establish requirements regarding the operation of certain electric generating facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 1997

Mr. PALLONE (for himself, Mr. CAMPBELL, Mr. FRANKS of New Jersey, Mr. ANDREWS, Mr. PASCRELL, Mr. SAXTON, Mr. PAYNE, Mr. WAXMAN, Mr. SMITH of New Jersey, Mr. ROTHMAN, Mr. PAPPAS, Mrs. ROUKEMA, Mr. LOBIONDO, Mr. MENENDEZ, and Mr. FRELINGHUYSEN) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To amend the Federal Power Act to establish requirements regarding the operation of certain electric generating facilities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS AND PURPOSES.**

4 (a) FINDINGS.—The Congress finds that:

5 (1) Restructuring of the electricity industry is
6 intended to promote competition among electricity
7 providers, resulting in lower electricity rates to con-

1 sumers, higher quality services, and a more robust
2 national economy.

3 (2) The benefits of competition will not be
4 achieved if some competitors enjoy an advantage re-
5 sulting from externalization of environmental or
6 other costs, permitting them to charge prices for
7 electricity that do not reflect the full economic and
8 environmental cost of production.

9 (3) Emissions into the air which endanger pub-
10 lic health, and threaten the quality of the Nation's
11 air, land, and water are classic externalities whose
12 cost is frequently not reflected in the price charged
13 for products such as electricity.

14 (4) Emission control requirements on electric
15 generating units are substantially different depend-
16 ing on their age and location, allowing older generat-
17 ing units to emit pollutants at excessive rates, in-
18 cluding emissions of nitrogen oxides approaching 10
19 times that of other generating units per unit of elec-
20 tricity generated.

21 (5) The policy of exempting older generating
22 units from emissions limitations applicable to new
23 units was based on the expectation that over time
24 older units would be retired, but that, contrary to

1 that expectation, such units continue to operate and
2 emit at excessively high rates.

3 (6) The disparity in regulatory treatment
4 among electric generating units provides a signifi-
5 cant competitive advantage for older generating
6 units and for those located in attainment areas that
7 will distort competition in a restructured electricity
8 industry, preventing the public from enjoying the
9 full economic benefits of competition.

10 (7) The disparity of regulatory treatment
11 among electric generating units is unfair to competi-
12 tors who achieve higher levels of environmental per-
13 formance in their operations.

14 (b) PURPOSES.—The purposes are—

15 (1) to ensure an economically efficient market
16 in electricity, in order to assure lower electricity
17 rates to consumers, higher quality services, and a
18 more robust national economy;

19 (2) to assure fair competition among partici-
20 pants in the free market in electric power that will
21 result from restructuring of the electric industry;
22 and

23 (3) to internalize the values of public health,
24 air, land, and water quality in the context of a com-
25 petitive market in electricity.

1 **SEC. 2. ALLOWANCE PROGRAM FOR CERTAIN AIR POLLUT-**
 2 **ANTS.**

3 Part III of the Federal Power Act is amended by re-
 4 designating sections 320 and 321 as sections 323 and 324
 5 respectively and by inserting the following new sections
 6 after section 319:

7 **“SEC. 320. GENERATION PERFORMANCE STANDARDS AND**
 8 **TONNAGE CAPS.**

9 “(a) OXIDES OF NITROGEN.—

10 “(1) GENERATION PERFORMANCE STANDARD.—

11 For each covered period, the Commission shall cal-
 12 culate a generation performance standard for oxides
 13 of nitrogen from covered electric generating units in
 14 the applicable region. The standard shall be equal to
 15 the statutory tonnage cap for the covered period di-
 16 vided by the Commission’s estimate (under section
 17 322(a)) of total electric generation from such units
 18 in the applicable region, as set forth in paragraph
 19 (2). The Commission shall publish such standard
 20 (expressed in pounds per megawatt hour) at least 30
 21 days prior to the beginning of the covered period
 22 concerned.

23 “(2) STATUTORY TONNAGE CAP.—The statu-
 24 tory tonnage cap (expressed in millions of tons) for
 25 emissions of oxides of nitrogen from covered electric

1 generating units in the applicable region for each
 2 covered period shall be as follows:

Covered Periods	Applicable Region	Statutory tonnage cap (million tons)
May 1–September 30, 1999	OTAG Region	1.5
May 1–September 30, 2000	OTAG Region	1.3
May 1–September 30, 2001	OTAG Region	1.0
May 1–Sept 30 after 2001 and before 2005	OTAG Region	0.78
Jan. 1–December 31, 2005 and each year thereafter	Continental US	2.0

3 “(3) OZONE EPISODES.—During each period
 4 coinciding with exceedances of the National Ambient
 5 Air Quality Standard for ozone, promulgated by the
 6 Administrator of the Environmental Protection
 7 Agency under the Clean Air Act (and during the 8
 8 hours preceding such exceedances), each covered
 9 unit with an actual emission rate greater than the
 10 generation performance standard shall be required
 11 to adjust its reported actual emissions under section
 12 321(b) by a factor of up to 3, depending on the
 13 unit’s distance from the exceedance. Units affected
 14 by this subsection may meet their obligations under
 15 section 321 either by emissions reductions at the af-
 16 fected unit, or by surrendering allowances equal to
 17 the difference between actual emissions and the
 18 emission limitation provided in this subsection.

19 “(4) DEFAULT.—If the Commission fails to
 20 publish a generation performance standard under

1 paragraph (1) for any covered period at least 30
2 days prior to the beginning of the covered period, for
3 that covered period the generation performance
4 standard for each covered electric generating unit in
5 the applicable region shall be 0.9 times the general
6 performance standard for the previous covered pe-
7 riod. If no generation performance standard has
8 been published for the previous covered period, the
9 generation performance standard for the covered pe-
10 riod shall be 1.15 pounds of oxides of nitrogen per
11 megawatt hour.

12 “(b) FINE PARTICULATE MATTER.—

13 “(1) GENERATION PERFORMANCE STANDARD.—

14 In order to reduce concentrations of sulfate fine par-
15 ticulate matter, for each calendar year in a covered
16 period, the Commission shall calculate a generation
17 performance standard for sulfur oxides from covered
18 electric generating units. The standard shall be
19 equal to the statutory tonnage cap for the covered
20 period, as set forth in paragraph (2) divided by the
21 Commission’s estimate (under section 322(a)) of
22 total electric generation from such units in the appli-
23 cable region. The Commission shall publish such
24 standard (expressed in pounds per megawatt hour)

1 at least 30 days prior to the beginning of the cov-
 2 ered period concerned.

3 “(2) STATUTORY TONNAGE CAP.—The statu-
 4 tory tonnage cap (expressed in millions of tons) for
 5 fine particulate matter as measured by emissions of
 6 sulfur oxides from covered electric generating units
 7 in the continental United States for a covered period
 8 shall be as follows:

Covered Periods	Statutory tonnage cap (million tons)
Jan. 1, 2000–Dec. 31, 2004	4.45
Jan. 1, 2005 and thereafter	4.0

9 “(3) DEFAULT.—If the Commission fails to
 10 publish a generation performance standard under
 11 paragraph (1) for any covered period at least 30
 12 days prior to the beginning of the covered period,
 13 the generation performance standard for each cov-
 14 ered unit for that period shall be 0.9 times the appli-
 15 cable General Performance Standard for the pre-
 16 vious applicable period. If no Generation Perform-
 17 ance Standard has been published for the previous
 18 covered period, the generation performance standard
 19 for the covered period shall be 1.75 pounds of sulfur
 20 oxides per megawatt hour.

21 “(c) OTHER POLLUTANTS.—

1 “(1) GENERATION PERFORMANCE STANDARD.—

2 The Commission is authorized to establish by rule a
3 generation performance standard for any other air
4 pollutant released in significant quantities by electric
5 generating units as needed to limit emissions that
6 the Administrator of the Environmental Protection
7 Agency determines can reasonably be anticipated to
8 present significant risks to human health or the en-
9 vironment. The standard shall be equal to the ton-
10 nage cap established pursuant to paragraph (2) di-
11 vided by the Commission’s estimate (under section
12 322(a)) of total electric generation from such units
13 in the continental United States. The Commission
14 shall publish such standard (expressed in pounds per
15 megawatt hour) at least 30 days prior to the begin-
16 ning of the covered period concerned.

17 “(2) TONNAGE CAP.—The Commission shall, in
18 consultation with the Administrator, promulgate by
19 rule a national limit on total annual emissions of
20 any such other pollutant from covered electric gener-
21 ating units, expressed in tons. The national limit on
22 annual emissions of such other pollutant shall be set
23 to protect human health and the environment.

1 **“SEC. 321. ALLOCATION AND TRADING OF ALLOWANCES;**
2 **COMPLIANCE.**

3 “(a) ALLOCATION AND TRADING OF ALLOWANCES.—

4 “(1) IN GENERAL.—For each covered period,
5 the Commission shall allocate allowances for oxides
6 of nitrogen, sulfur oxides, and any other pollutant
7 for which a tonnage cap has been established pursu-
8 ant to section 320(c), among covered units in the
9 applicable region by multiplying the generation per-
10 formance standard for that covered period for each
11 such air pollutant by such unit’s electric generation
12 during the covered period.

13 “(2) ENERGY CONSERVATION.—The Commis-
14 sion shall also allocate allowances for such air pollut-
15 ants to each person in the applicable region who
16 generates or markets electric energy and who dem-
17 onstrates to the Commission (in accordance with the
18 North American Verification Protocols) that such
19 person has achieved a reduction in gross electric en-
20 ergy demand during a covered period, as certified by
21 an independent body approved by the Commission.
22 The allowances allocated to any such person shall be
23 determined by multiplying the generation perform-
24 ance standard for the air pollutant concerned for the
25 covered period by such reduction in electric energy

1 demand. Only one person may apply for allowances
2 for any particular energy conservation action.

3 “(3) CARRYOVER AND TRADING OF ALLOW-
4 ANCES.—Allowances allocated to any person for any
5 air pollutant for any covered period that are not
6 used to demonstrate compliance with subsection (b)
7 for that pollutant during any covered period may be
8 retained and used to demonstrate compliance with
9 such requirements by any person in a subsequent
10 covered period. Such allowances may be transferred
11 by the person to whom allocated to any other per-
12 son. Any person to whom such allowances have been
13 transferred may use the allowances in the covered
14 period or in a subsequent covered period to dem-
15 onstrate compliance with subsection (b) or may
16 transfer such allowances to any other person for
17 such purposes.

18 “(b) COMPLIANCE WITH ALLOWANCE LIMITS.—For
19 each covered period, the owner or operator of each covered
20 unit in the applicable region shall surrender to the Com-
21 mission a number of allowances for oxides of nitrogen, sul-
22 fur oxides, and any other pollutant for which a tonnage
23 cap has been established pursuant to section 320(c), equal
24 to the total tonnage of each such air pollutant emitted
25 during the covered period. Emissions shall be determined

1 based on continuous monitoring approved by the Adminis-
2 trator.

3 “(c) EXCESS EMISSIONS.—The owner or operator of
4 any covered unit that emits oxides of nitrogen, sulfur ox-
5 ides, or any other pollutant for which a tonnage cap has
6 been established pursuant to section 320(c), for a covered
7 period in any calendar year in excess of the allowances
8 for such air pollutant that the owner or operator holds
9 for use for the unit for the covered period shall be liable
10 for the payment of an excess emissions penalty, and shall
11 be liable to offset the excess emissions by an equal tonnage
12 amount of such air pollutant in the following covered pe-
13 riod or such other period as the Commission shall pre-
14 scribe. The excess emissions penalty for oxides of nitrogen
15 and sulfur oxides shall be calculated on the basis of the
16 number of tons emitted in excess of the total number of
17 allowances held, multiplied by \$5,000, indexed by inflation
18 under rules promulgated by the Commission. The Com-
19 mission shall, by rule in consultation with the Adminis-
20 trator, establish penalties of equal effectiveness for other
21 pollutants for which a tonnage cap has been established
22 pursuant to section 320(c). Any such penalty shall be due
23 and payable without demand to the Commission. Excess
24 emissions penalties and offsets shall be determined and
25 administered in accordance with regulations to be promul-

1 gated by the Commission within 6 months after the enact-
2 ment of this section.

3 **“SEC. 322. GENERAL PROVISIONS RELATING TO SECTIONS**
4 **320 THROUGH 321.**

5 “(a) ESTIMATE OF ELECTRIC GENERATION.—For
6 each covered period, the Commission shall publish the
7 Commission’s estimate of the total electric generation by
8 covered electric generating units in the applicable region.
9 Such estimate shall be computed based on total electric
10 energy generation from all covered units during the cur-
11 rent year or covered period plus the projected growth (as
12 determined by the Secretary of Energy) in electric energy
13 generation and expected verifiable electric energy con-
14 servation for the covered period. The Commission shall
15 publish such estimate at least 30 days prior to the begin-
16 ning of the applicable period for which the estimate is
17 made.

18 “(b) TRANSFER.—If the President finds that any
19 functions and duties vested in the Commission under sec-
20 tions 320 or 321 or any combination thereof can be more
21 efficiently carried out by another department, agency, or
22 instrumentality of the United States, the President shall
23 transfer such functions and duties in accordance with such
24 finding. In any such case, such other department, agency,

1 or instrumentality shall be substituted for the Commission
2 for purposes of suits under subsection (c).

3 “(c) CITIZEN SUIT.—Except as provided in para-
4 graph (4) of this subsection, any person may commence
5 a civil action on his own behalf—

6 “(1) against any person (including (i) the Unit-
7 ed States, and (ii) any other governmental instru-
8 mentality or agency to the extent permitted by the
9 Eleventh Amendment to the Constitution) who is al-
10 leged to have violated (if there is evidence that the
11 alleged violation has been repeated) or to be in viola-
12 tion of (A) any requirement of section 320 or 321
13 or (B) an order issued by the Commission or a State
14 with respect to such requirements, and

15 “(2) against the Commission where there is al-
16 leged a failure of the Commission to perform any act
17 or duty under section 320, 321, or 322 which is not
18 discretionary with the Commission.

19 The district courts shall have jurisdiction, without regard
20 to the amount in controversy or the citizenship of the par-
21 ties, to enforce compliance with the requirements of sec-
22 tions 320 and 321 or to order the Commission to perform
23 such act or duty, as the case may be, and to apply any
24 appropriate civil penalties (except for actions under para-
25 graph (2)). The district courts of the United States shall

1 have jurisdiction to compel (consistent with paragraph (2)
2 of this subsection) agency action unreasonably delayed. In
3 any such action for unreasonable delay, notice to the Com-
4 mission shall be provided 180 days before commencing
5 such action.

6 “(3) No action may be commenced—

7 “(A) under paragraph (1)—

8 “(i) prior to 60 days after the plain-
9 tiff has given notice of the violation (I) to
10 the Commission, (II) to the State in which
11 the violation occurs, and (III) to any al-
12 leged violator of the standard, limitation,
13 or order, or

14 “(ii) if the Commission or State has
15 commenced and is diligently prosecuting a
16 civil action in a court of the United States
17 or a State to require compliance with the
18 standard, limitation, or order, but in any
19 such action in a court of the United States
20 any person may intervene as a matter of
21 right.

22 “(B) under paragraph (2) prior to 60 days
23 after the plaintiff has given notice of such ac-
24 tion to the Commission.

1 “(4) The court in issuing any final order in any
2 action brought pursuant to paragraph (1), may
3 award costs of litigation (including reasonable attor-
4 ney and expert witness fees) to any party, whenever
5 the court determines such award is appropriate.”.

6 **SEC. 3. DEFINITIONS.**

7 Section 3 of the Federal Power Act is amended by
8 adding the following after paragraph (24):

9 “(25) For oxides of nitrogen, the terms ‘appli-
10 cable region’ and ‘covered period’ refer to the appli-
11 cable regions and each of the covered periods speci-
12 fied in the chart in section 320(a)(2). For fine par-
13 ticulate matter and any other pollutant for which a
14 tonnage cap has been established pursuant to section
15 320(c), the term ‘applicable region’ means the con-
16 tinental United States. For fine particulate matter,
17 the term ‘covered period’ means each of the covered
18 periods specified in the chart in section 320(b)(2).
19 For any other pollutant for which a tonnage cap has
20 been established pursuant to section 320(c), the
21 term ‘covered period’ means each calendar year pe-
22 riod beginning with the second calendar year follow-
23 ing the establishment of a tonnage cap for such pol-
24 lutant.

1 “(26) The term ‘covered electric generating
2 unit’ means an electric generating unit in the appli-
3 cable region with a nameplate capacity of 15 MWe
4 or greater.

5 “(27) The term ‘electric generating unit’ means
6 a boiler and associated turbine or turbines, or other
7 device for generating electricity using fossil fuels; or
8 a device for generating electricity from renewable
9 sources of energy other than hydroelectric power.

10 “(28) The term ‘electric energy generation’
11 means the total electric energy buss bar output of an
12 electric generating unit and cogenerated thermal en-
13 ergy, including sales of steam, as converted to com-
14 mon units by the Commission by rule.

15 “(29) The term ‘OTAG region’ means the 37
16 States comprising the Ozone Transport Assessment
17 Group.”.

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